

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

DANIEL BENSON TAYLOR v. STATE OF TENNESSEE

**Appeal from the Circuit Court for Hickman County
No. 04-5129C Donald P. Harris, Judge**

No. M2005-00560-CCA-R3-CO - Filed December 1, 2005

The Petitioner, Daniel Benson Taylor, appeals the trial court's denial of his petition for a writ of habeas corpus. The State has filed a motion requesting that this Court affirm the trial court's denial of the petition pursuant to Rule 20, Rules of the Court of Criminal Appeals. The State's motion is granted. The judgment of the trial court is affirmed.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed
Pursuant to Rule 20, Tenn. Ct. Crim. App. R.**

DAVID H. WELLES, J., delivered the opinion of the court, in which THOMAS T. WOODALL and ROBERT W. WEDEMEYER, JJ., joined.

Daniel Benson Taylor, Pro Se.

Paul G. Summers, Attorney General and Reporter; Blind Akrawi, Assistant Attorney General; Ron Davis, District Attorney General; and Michael Markham, Assistant District Attorney General, for the appellee, State of Tennessee.

MEMORANDUM OPINION

On October 6, 1982, the Petitioner was convicted and sentenced to life imprisonment for the offense of second degree murder committed on September 20, 1980. State v. Taylor, 668 S.W.2d 681 (Tenn. Crim. App.), perm. to appeal denied, (Tenn. 1984). His conviction and sentence were affirmed by this Court on appeal, and the supreme court denied permission to appeal. Id. The Petitioner filed a previous petition for a writ of habeas corpus which was dismissed by the trial court on January 19, 1999. This Court affirmed that dismissal on appeal on August 31, 2000. Daniel Benson Taylor v. Jack Morgan, Warden, No. M1999-01416-CCA-R3-PC, 2000 WL 1278373 (Tenn. Crim. App., Nashville, Aug. 31, 2000), perm. to appeal denied, (Tenn. 2001).

On December 14, 2004, the Petitioner filed a second petition for a writ of habeas corpus. The Petitioner presented the same claim for relief as he did in his first petition, mainly that his sentence

is void because he was sentenced under the wrong statute. Relying upon the supreme court's decision in Dixon v. Holland, 70 S.W.3d 33 (Tenn. 2002), the Petitioner argues that this Court's ruling in his first habeas case was erroneous. The trial court denied the second habeas corpus petition. The court stated: "Since Dixon does not mandate a contrary result, this court is bound by the previous determination made in this case by the Court of Criminal Appeals." The Petitioner appeals.

The Tennessee Constitution guarantees a convicted criminal defendant the right to seek habeas corpus relief. See Tenn. Const. Art. I, § 15. However, the grounds upon which habeas corpus relief will be granted are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). A petition for habeas corpus relief may only be granted when the judgment is shown to be void, rather than merely voidable. Id. A judgment is void only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that the convicting court was without jurisdiction or authority to sentence the defendant or that the defendant's sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). A sentence imposed in direct contravention of a statute is illegal and, thus, void. Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000). A petitioner bears the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000). Furthermore, it is permissible for a trial court to summarily dismiss a habeas corpus petition, without the appointment of counsel and without an evidentiary hearing, if there is nothing on the face of the record or judgment to indicate that the convictions or sentences addressed therein are void. Passarella v. State, 891 S.W.2d 619, 627 (Tenn. Crim. App. 1994).

In our opinion affirming the denial of the Petitioner's first habeas corpus petition, this Court stated the following:

The question presented for our consideration is which of two apparently conflicting statutes is applicable to the Defendant's case. As previously stated, the offense in this case was committed on September 20, 1980, and the Defendant was sentenced on October 6, 1982. On July 1, 1982, subsequent to the offense and prior to sentencing, the Tennessee Criminal Sentencing Reform Act of 1982 became effective. It provided, in pertinent part,

All persons who commit crimes on or after July 1, 1982, shall be tried and sentenced under this chapter. For all persons who committed crimes prior to July 1, 1982, the prior law shall apply and remain in full force and effect in every respect, including but not limited to sentencing, parole and probation.

Tenn. Code Ann. § 40-35-112(a) (1982) (repealed 1989). On the basis of this statute, the trial court sentenced the Defendant under pre 1982 law.

However, the Defendant argues that former Tennessee Code Annotated § 39-1-105 should have governed his sentence. This statute, entitled, "Repealed or amended laws - Application in prosecution for offense," provides as follows:

Whenever any penal statute or penal legislative act of the state is repealed or amended by a subsequent legislative act, any offense, as defined by such statute or act being repealed or amended, committed while such statute or act was in full force and effect shall be prosecuted under such act or statute in effect at the time of the commission of the offense. In the event the subsequent act provides for a lesser penalty, any punishment imposed shall be in accordance with the subsequent act.

Id. § 39-1-105 (1982) (repealed 1989). The Defendant thus contends that he should have been sentenced under the Sentencing Reform Act of 1982, under which he claims he would have received a lesser sentence.

. . .

[T]he Defendant contends that he received an illegal sentence because he should have been sentenced under the Criminal Sentencing Reform Act of 1982, and we will address his argument. In doing so, we must determine which of the two statutes previously cited controls. To make such a determination, we are guided by rules of statutory construction. Generally, "[a]s a matter of statutory construction, a specific statutory provision will control over a more general provision." State v. Cauthern, 967 S.W.2d 726, 735 (Tenn.1998). "[A] statute treating [a] subject in a more general manner should not be considered as intended to affect [a] more particular provision." Cole v. State, 539 S.W.2d 46, 50 (Tenn. Crim. App. 1976). Moreover, as between two conflicting statutes enacted at different points in time,

[s]ince the more recent statute is a later expression of the legislative intent, ... the later enactment will normally control. In such a case, the newer statute may be regarded as creating an exception to, or qualification of, the prior statute. However, where there is no clear intention to the contrary, a specific statute will not be controlled or nullified by a general one, regardless of the priority of their enactment.

82 C.J.S. Statutes § 354 (1999).

In this case, Tennessee Code Annotated § 39-1-105, cited by the Defendant in support of his contention that he should have been sentenced under the 1982 Sentencing Reform Act, was part of our criminal code under both the 1982 Sentencing Reform Act and pre 1982 law. It was repealed in 1989. In contrast,

Tennessee Code Annotated § 40-35-112 was enacted in 1982 with the passage of the 1982 Sentencing Reform Act. Furthermore, we note that the language of Tennessee Code Annotated § 40-35-112(a), the newer statute, is more specific than that of Tennessee Code Annotated § 39-1-105, which, by its very terms, applies when "any penal statute or any penal legislative act of the state is repealed or amended by a subsequent legislative act." Tenn. Code Ann. § 39-1- 105 (1982) (repealed 1989) (emphasis added).

Because of the more specific nature of Tennessee Code Annotated § 40-35-112 and its subsequent enactment, we conclude that Tennessee Code Annotated § 40-35-112 should control over Tennessee Code Annotated § 39-1-105 in this case. We therefore conclude that the sentence the Defendant received was not illegal: The trial judge correctly concluded that the Defendant was properly sentenced under pre 1982 law. We thus affirm the trial court's denial of habeas corpus relief.

Taylor, 2000 WL 1278373, at *1-3.

Again, the Petitioner advances the same argument in the instant case as he did in his first habeas petition. Because this Court previously denied relief on this very claim, principles of *res judicata* dictate that this issue not be relitigated. See James Yates v. State, No. W2005-01047-CCA-R3-HC, 2005 WL 2759737, at *2 (Tenn. Crim. App., Jackson, Oct. 25, 2005).

The Petitioner's contention that this Court's earlier opinion on this issue is erroneous in light of the supreme court's ruling in Dixon is without merit. The holding in Dixon does not apply to the instant case because, as both the State and trial court note, the supreme court construed the application of a statute which is not at issue in this Petitioner's case. In Dixon, the defendant was convicted and sentenced in 1981 for a crime he committed in 1978. 70 S.W.3d at 35. The defendant was sentenced pursuant to the statute as it existed at the time of the offense. Id. at 36. In 1979, after commission of the crime but before the defendant's conviction, the criminal statute was amended. Id. This amendment provided a lesser penalty, and the defendant argued in his habeas corpus petition that he should have been sentenced pursuant to the amended statute, in accordance with the criminal law savings statute which was in effect at the time of both the offense and the conviction. Id. at 37. The supreme court held as follows:

[W]e conclude that Dixon's sentence under Tenn. Code Ann. § 39-2603 (1975) is void. We presume that the legislature was aware of the savings statute, Tenn. Code Ann. § 39-114 (1975), when it enacted the Class X Felonies Act. The amendment of the kidnapping for ransom statute to a Class X felony under Tenn. Code Ann. § 39-2603 (Supp.1979) imposed a lesser penalty. The savings statute provided that when a statute was amended persons would be prosecuted under the statute in effect at the time the act was committed. See Tenn. Code Ann. § 39-114 (1975) [replaced by Tenn. Code Ann. § 39-1-105 (1982)]. Persons were to be sentenced, however, pursuant to the subsequent act when the penalty was lesser. See id. Thus, Dixon

should have been sentenced pursuant to the statute with the lesser penalty, Tenn. Code Ann. § 39-2603 (Supp.1979) (aggravated kidnapping).

Furthermore, a plain reading of Tenn. Code Ann. § 39-5404 (1979) reveals that the legislature recognized the operation of the savings statute when it enacted section 39-5404. The first part of section 39-5404 provided that "[a]ll persons who have committed crimes on or after September 1, 1979, *shall be tried and sentenced* under the provisions of Act 1979, ch. 318." (Emphasis added). The second part of the statute, however, stated that "persons whose crimes occurred prior to September 1, 1979, but whose trials occur on or after September 1, 1979, *shall be tried* under the law as it was prior to September 1, 1979, and as to those defendants, the prior law shall remain in full force and effect." Tenn. Code Ann. § 39-5404 (1979) (emphasis added). The Court of Criminal Appeals construed the second portion of the statute to mean that offenses committed prior to September 1, 1979, should be "tried and *sentenced*" under the prior law. This construction, however, renders part of the statute superfluous. We must assume that the legislature purposely used only the word "tried" when referring to offenses committed before September 1, 1979, as opposed to "tried and sentenced." To assume otherwise would make the phrase "and sentenced" in the first portion of the statute superfluous. The absence of the phrase "and sentenced" in the second part of the statute indicates that the legislature was aware of the provisions of the criminal savings statute. Dixon therefore should have been sentenced pursuant to the aggravated kidnapping statute to life with possibility of parole. Tenn. Code Ann. § 39-2603 (Supp.1979). Accordingly, we hold that the sentence is void and grant habeas corpus relief.

Id. at 37-38.

Although the same savings statute discussed in Dixon was in effect during the Petitioner's trial, the language of the applicable sentencing statutes, as noted in the above-quoted opinions, differs dramatically. In the Petitioner's case, the Tennessee Criminal Sentencing Reform Act of 1982 specifically stated that "the prior law should remain in full force and effect in every respect, including but not limited to sentencing, parole and probation." Tenn. Code Ann. § 40-35-112(a) (1982) (repealed 1989). Whereas, in Dixon, the language of the applicable sentencing statute did not specifically state that the prior law should remain in full force and effect as to sentencing. Tenn. Code Ann. § 39-5404 (1979) (repealed 1989). Accordingly, the Petitioner's reliance upon Dixon is misplaced.

The Petitioner also argues, for the first time on appeal, that the original trial court erred "by entering a verdict, without a judgment." Issues which were not asserted in the habeas petition filed in the trial court will not be considered for the first time on appeal. State v. Turner, 919 S.W.2d 346, 356 (Tenn. Crim. App. 1995). Therefore, this issue is waived.

For the reasons stated above, the trial court did not err in denying the Petitioner's habeas corpus petition. Accordingly, the State's motion is granted, and the judgment of the trial court is affirmed in accordance with Rule 20, Rules of the Court of Criminal Appeals.

DAVID H. WELLES, JUDGE